

CDCR Valdivia Monitoring Report

Wasco State Prison

November 4 - 6, 2008

4th Quarter



**CALIFORNIA DEPARTMENT OF CORRECTIONS
AND REHABILITATION**



**VALDIVIA MONITORING TOUR
Wasco State Prison**



Final Report to Task Force

Submitted by the

OFFICE OF COURT COMPLIANCE

December 11, 2008

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VALDIVIA/ARMSTRONG TOUR REPORT

Wasco State Prison

4th Quarter 2008

November 4-6, 2008

I. EXECUTIVE SUMMARY

A) Purpose of the Tour

The Office of Court Compliance (OCC) observed parole revocation proceedings at the Wasco State Prison, and met with California Department of Corrections and Rehabilitation (CDCR) and California Parolee Advocacy Program (CalPAP) staff. The OCC also toured the Bakersfield Parole Unit. The purpose of the tour was to evaluate CDCR's compliance with the requirements of the *Valdivia* Permanent Injunction, the *Valdivia* Remedial Plan, and current departmental policy and procedure pertaining to parole revocation.

B) Tour Attendees

The CDCR representatives were Russa Boyd, Deputy Commissioner; Greg Wyke, Correctional Counselor II; and Tracy Master, Parole Service Associate, all from the Office of Court Compliance.

C) Administration of the Tour

The monitoring group observed the following processes:

Revocation:

- 1 Notice of Rights/Charges,
- 11 Probable Cause Hearings, and
- 2 Revocation Hearings.

The monitoring group also reviewed the following documents/revocation packets:

- 150 revocation packets. (**Exhibits 1-A and 1-B**)

The Office of Court Compliance reviewed 150 revocation packets prior to the tour in order to measure compliance with the *Valdivia* time frames as well as due process and procedural requirements. The revocation packets reviewed prior to the tour were collected from CalPAP allowing OCC to conduct analysis on packets provided to defense counsel and to identify issues specific to the site prior to the tour. A summary of the timeliness for each revocation step can be found in Exhibit 1-A. Compliance statistics and trends gathered from a review of the revocation packets are discussed in each section below. Although the body of the report addresses the most pertinent and recurring compliance deficiencies, a summary of all compliance deficiencies identified from a review of the revocation packets can be found in Exhibit 1-B. **It should be noted that the revocation packets analyzed in preparation for the tour were collected during the course of several months in order to allow the OCC time to analyze all the data contained therein. As a result, some packets reveal compliance deficiencies that have already been addressed through corrective action such as one-on-one remedial training with supervisors, statewide training, and Valdivia Alerts.**

In addition, the monitoring team collected revocation packets for the cases observed during the tour itself. A discussion of the compliance trends and deficiencies identified during the tour are discussed in the body of the report and accompanying exhibits but are not included in Exhibits 1-A or 1-B.

D) Corrective Action Plan:

This report identifies areas in need of corrective action(s) where compliance deficiencies were observed during the monitoring tour and/or through a review of the revocation documents. The Office of Court Compliance has identified corrective action(s) for any deficiency associated with the *Valdivia* procedures/process where the compliance rate was determined to be less than 90%. The Office of Court Compliance will allow each applicable division to develop the corrective action they deem most appropriate for remedying the compliance deficiencies identified in this report. However, the Office of Court Compliance will continue to provide input and suggestions to the affected divisions in order to develop efficient corrective action and any necessary policy changes.

II. Probable Cause Determination

No later than 48 hours after placement of the parole hold, or no later than the next business day if the hold is placed on a weekend or holiday, the parole agent and unit supervisor will confer to determine whether probable cause exists to continue the parole hold, and will document their determination. (Paragraph 11(b)(ii)) Valdivia Permanent Injunction.

- **100% compliant with requirement that a probable cause determination be completed no later than 48-hours after placement of parole hold.**

Timeliness of the probable cause determination

The monitors reviewed 150 revocation packets prior to the tour and the CDCR 1502-B was included in 148 packets. A timely probable cause determination was completed in 144/148 cases (97%). (**Exhibit 1-A**). A review of the four late cases revealed that each parole hold was placed on a Saturday and the PCD was completed on the next business day as required by the *Valdivia* Remedial Plan. Therefore, all 148 PCDs were actually timely. The RSTS "Closed Case Summary – Valdivia Timeliness Rules" report for the Bakersfield 7 Unit reveals that 100% of PCDs were timely for the month of October 2008. (**Exhibit 2**)

Bakersfield Parole Unit Interview

The monitors interviewed the Unit Supervisor and three parole agents, none of whom reported any issues concerning their ability to complete a timely probable cause determination. This is supported by the timeliness statistics cited above. The US reported he conducts a case conference with the agent following a new arrest, during which time remedial sanction options are discussed. Agents reported they have used a wide range of programs as remedial sanctions and do not limit their choice to the In-Custody Drug Treatment Program (ICDTP).

The US and his staff recently attended the DAPO training, which included a review of specific requirements of *Valdivia* and clarified and re-emphasized expectations regarding completion of the CDCR 1502-Bs and Violation Reports following a new arrest. The revocation packets analyzed for to this tour were reviewed before to the statewide training occurred; therefore, the

information contained in them does not reflect the changes in report writing and content that are expected to occur as a result of the training. However, interviews with the parole agents did divulge a clearer understanding of the work product necessary to maintain compliance with the mandates of the Permanent Injunction. The OCC expects to see much improvement in the quality and content of the revocation packets when WSP is toured next.

Review of the revocation documents

A review of the revocation packets collected prior to the tour reveals the following pertinent compliance deficiency that requires a corrective action:

- In 40/148 (27%) cases, the CDCR 1502-B did not include a short statement of fact for each charge alleged against the parolee. **(Exhibits 1-B and 4). See Section III below for more detailed discussion regarding the content of the 1502-B as it is used to serve the parolee adequate notice of the alleged parole violations, as required by the Injunction.**

❖ CORRECTIVE ACTION REQUIRED:

- Paragraph 11 of the Valdivia Permanent Injunction requires that the parolee be served with actual notice of the alleged parole violation, including a short factual summary of the charged conduct. The OCC recommends that DAPO review any current policies and procedures that address what information must be included on the CDCR 1502-B and make revisions to ensure the due process requirement regarding provision of a short summary of the charged conduct is met, if necessary. It is also recommended that DAPO disseminate a policy and procedure requiring that an adequate short statement of fact for each alleged violation of parole be included on the CDCR 1502-B, and include specific guidance on minimum standards regarding the adequacy of the factual summary.

III. Notice of Rights/Charges

If the parole hold is continued thereafter, no later than 3 business days after the placement of the hold, the parolee will be served with actual notice of the alleged parole violation, including a short factual summary of the charged conduct and written notice of the parolee's rights regarding the revocation process and timeframes. (Paragraph 11(b)(iii)) Valdivia Permanent Injunction.

- 97% compliant with requirement that the Notice of Rights/Charges occur no later than 3-business days after the parole hold
- 99% compliant with providing parolee written notice of revocation rights and procedural timeframes (via the BPT 1100)
- 73% compliant with requirement that a short factual summary of charged conduct be provided at the time of notice (via the CDCR 1502-B).

Timeliness of Notice

Two cases reviewed prior to the tour were missing the BPT 1100. It is critical the BPT 1100 is included in every completed copy of the revocation packet (both BPH and attorney copies).

Without the BPT 1100, which includes the parolee's signature acknowledging service, there is no way to verify the parolee was actually served notice of his/her parole revocation rights and charges. 144/148 reviewable notices were timely. **(Exhibit 1-A)**. The four late cases averaged one day late. *Id.* The monitors were only able to observe one notice during the tour, which was late.

The CDCR continues to maintain that there are a number of reasons that constitute good cause for delay in completing a notice. Examples include, but are not limited to, instances where the parolee is out to court, medically unavailable, or has been transported to another location by the County, all of which are outside the control of the State. A summary of the five late notices (four reviewed prior to the tour and one observed NOR) is in the table below, along with the results of the review to determine whether there was a good cause of delay.

Parole Name/CDC #	NOR NLT	Date NOR Occurred	Good Cause / Not Good Cause for Delay
Heminger (V21129)	05/29/2008	5/30/2008	<u>Not good cause</u> – Case was already 1 day late at the PCD step and RSTS does not give any reason for the delay.
Howard (F23108)	05/09/2008	5/12/2008	<u>Not good cause</u> – No reason for delay given. The parolee was not transferred to WSP until 5/15/08 so he was available at the county jail for service.
Jimenez (T97117)	06/16/2008	06/17/2008	<u>Not good cause</u> – Parolee was transferred to WSP on 6/16/08 but no good cause for late notice was given.
Sanders (T93499)	11/03/2008	11/04/2008	<u>Not good cause</u> – Parolee was transferred to WSP late on 11/3. DRUNA documented late arrival and receipt of late paperwork.
Smith (F65538)	06/06/2008	06/09/2008	<u>Not good cause</u> – No reason for delay given

Therefore, of the 149 total cases in which timeliness of the notice could be determined, 144 cases (97%) were in compliance with the NOR timeframe.

Adequate statement of facts on the CDCR 1502-B

Minimum due process, as defined in *Morrissey*, requires the parolee be provided written notice of the claimed violation of parole and the *Valdivia* Permanent Injunction requires the parolee be given **“actual notice of the alleged parole violation, including a short factual summary of the charge conduct.”** Officers from outside law enforcement agencies do not provide the details of most arrests prior to completion and submission of their arrest report. Therefore, the parole agent does not know the facts to support the alleged violations until the arresting officer generates the police report. CDCR maintains that stating the information provided by the arresting law enforcement agency, including the name of the arresting agency and charge(s) the parolee was reportedly arrested for, is sufficient until the final police report is made available to the parole agent.

In those instances where DAPO initiates the arrest, or the facts underlying the arrest are known to the parole agent, a short factual summary of the charged conduct, including a summary of the parolee behavior and/or evidence leading to the violation charge(s), should be included on the CDCR 1502-B (rather than a minimal recitation of the charges themselves). For example, if a parolee is arrested by law enforcement on a Parolee at Large (PAL) warrant, the parole agent should indicate on the 1502-B the facts that support the absconding charge. The short factual

summary might read that the agent attempted a home visit and left a card with reporting instructions, but the parolee did not report, and contacted family members living at the parolees ROR who indicated that they have not seen the parolee for weeks. Such language provides a factual basis for the charge. It is insufficient if the parole agent simply indicates the parolee was arrested on a PAL warrant. The parolee behavior that gives rise to issuance of the PAL warrant is the critical component of the required factual summary. A short factual summary of the charged conduct is necessary to serve the parolee notice of the alleged violations and allow him/her to know the facts that supported placement of the parole hold and begin formulating a defense. This is required by the Permanent Injunction.

In 40/148 cases (27%) reviewed prior to the tour, the CDCR 1502-B failed to meet the Injunction's requirement to provide a short factual summary of each charged conduct at the time the CDCR 1502-B was generated. (**Exhibits 1-B and 4**). The OCC continues to see this issue at most locations in the state. At the core of agents' failure to include an adequate factual summary on the 1502-B to sufficiently notice the parolee may be that the applicable DAPO policy (04-30) does not give clear direction to agents on the requirement of the Injunction in this regard. DAPO did issue an informational memorandum on January 2, 2008 that provides some guidance to bring agents into compliance. DAPO also issued a *Valdivia* Alert on June 12, 2008, directing staff to include a short factual summary for all known charges. Additionally, in the 2004 roll-out training for *Valdivia*, and in the refresher training conducted in 2006 and 2007 for agents, specific direction was given about including a short factual summary on the 1502-B. DAPO should consider amending policy 04-30, or develop new policy, to include the requirement that agents include a short factual summary for each charge on the 1502-B, as well as minimum standards regarding report content.

Staff from DAPO Headquarters recently completed statewide training for field staff, which included a discussion regarding minimum standards for the factual summaries contained on the 1502-B, as well as the Injunction's requirements as they pertain to noticing the parolee of the charges against them. OCC staff has observed the training and field staff appear receptive to the information provided. The OCC anticipates that the training will create the foundation for improved report content in this regard during future monitoring. However, the OCC will continue to monitor this issue and recommend additional corrective action if needed.

Charges Added After Notice

CDCR acknowledges that the 1502-B should include all alleged parole violations known to the parole agent at the time the report is authored. According to DAPO informational memo dated January 2, 2008, entitled "Violation Report Format and Content," "The parole agent shall include all known or suspected charges at the time the Charge Report is completed."

Pursuant to the terms of the *Valdivia* Permanent Injunction and Remedial Plan, the agent of record is given time between submission of the 1502-B and completion of the CDCR 1676 (Violation Report) in order to conduct a follow-up investigation regarding the parole violation(s) alleged against the parolee. During this investigation the agent may discover information leading to additional charges against the parolee which were not presented at the time the NOR was completed, and which the parole agent was not aware of at the time the 1502-B was completed. This is often the case where an arrest is initiated by local law enforcement, who often informs the

parole agent of the initial reason the parolee was placed into custody. In a number of cases the parole agent does not learn of the panoply of charges alleged against the parolee until local law enforcement concludes its investigation and provides DAPO their complete incident report, after the 1502-B has been completed. CDCR maintains it is not a violation of due process or the *Valdivia* Permanent Injunction when charges are added after the NOR, where the agent did not have knowledge of the additional charges at the time the 1502-B was written. However, a number of cases were reviewed wherein the parole agent had, or should have had, all information related to the added charges at the time the 1502-B was authored but did not include those charges on the 1502-B for presentation to the parolee at the NOR.

There were 42 cases reviewed prior to the tour in which charges were added after the parolee was served notice (28%). There were 27/42 cases (64%) in which investigation revealed the parole agent had, or should have had, information to support the additional charge(s) at the time the 1502-B was authored. In 15/42 cases, investigation revealed that the parole agent did not have knowledge of the charge(s) when writing the 1502-B, thereby justifying the addition of the charge(s) on the Violation Report. (**Exhibits 1-B and 5**). DAPO's current statewide training provides agents direction to conduct a thorough case review and include all charges known or knowable at the time the 1502-B is authored. The agents interviewed during the tour were able to articulate the direction provided during the training on this subject and indicated they were incorporating the training into file reviews and report completion.

Staff Interviews

The monitors interviewed the Supervising Notice Agent (SNA) and the Notice Agent (NA) assigned to Wasco. The SNA reported he is down three notice agents in his area but hopes to have a full compliment of staff soon. In the meantime, the SNA covers areas as needed and the notice agent for Wasco also covers North Kern State Prison.

The SNA reported he audits all DEC and RSTS entries for accuracy and completeness. Notice agents fax completed notice documents and logs daily for his review. The SNA conducts follow-up with staff when the notice documents or logs reveal an incomplete or late case, in order to identify the causes for the deficiency, as well as possible remedies. This is a proactive approach to identifying compliance trends and necessary corrective actions and the monitors were impressed with the quality control mechanisms the SNA has put into place.

The pre-tour packet review revealed that one notice agent was completing Sections IV and V of the 1073 in DEC in 54/150 (36%) cases. (**Exhibit 1-B and 6**) This issue was identified in the second quarter 2008 self-monitoring tour report for the North Kern State Prison. The SNA took corrective action after the second quarter report was issued by training the notice agent on proper completion of the 1073 in DEC, and specifically explaining that Sections IV and V of the 1073 are completed by DRU staff. However, many of the packets reviewed in preparation for this tour were analyzed before corrective action was taken. Following this tour, the SNA confirmed that remedial training was given to the notice agent responsible and the issue has been resolved. The OCC reviewed a number of the 1073s completed since the SNA took corrective action to ensure the issue has been resolved and impressively, the notice agent in question now completes the appropriate sections of the 1073 in DEC and leaves Sections IV and V to be completed by DRU staff. The OCC deems this issue resolved.

Preparation for Notice

The notice agent follows current department policy and procedure in preparing for a notice. She reviews the BPT 1073 and supporting documents for any required ADA accommodations. She reported she reviews DEC and inputs the completed BPT 1073 information into DEC by the close of business on the same day the notice was completed.

Method of Notice

The DRUNA conducted a thorough and complete notice, including a review of disabilities or needed accommodations. At the outset, the parolee advised the agent he could not see well even though he had his own glasses [Sanders (T93499), **Exhibit 7**]. The agent offered the parolee a magnifying sheet, which the parolee used to review each document presented to him. In addition, the agent read each document to the parolee. The agent noted in Section III of the 1073 that the parolee needed glasses but did not document the use of a magnifying sheet as a form of effective communication during the actual notice. The OCC recommends that notice agents document all accommodations offered or provided during the notice in order to facilitate the future provision of accommodations at subsequent revocation proceedings and to protect the notice agent from any claims that an accommodation was not offered to facilitate effective communication during the notice. The notice agent read the BPT 1100 verbatim and reviewed each charge with the parolee. The parolee had an opportunity to ask questions and received all paperwork at the conclusion of the meeting.

Review of the Notice documents

Revocation packets reviewed prior to the tour revealed the following pertinent compliance deficiencies. A breakdown of all compliance deficiencies identified from a review of the notice documents can be found in Exhibit 1-B. All deficient BPT 1073s are attached as **Exhibit #8**.

- The BPT 1073 was not included in the attorney copy of the revocation packet in two cases.
- In 17/30 (57%), no source document was attached to the BPT 1073 although Section I identified a disability, needed an accommodation, or the reading /GPL level below 4.0.

❖ CORRECTIVE ACTION REQUIRED:

- Paragraph 11 of the *Valdivia* Permanent Injunction requires that the parolee be served with actual notice of the alleged parole violation, including a short factual summary of the charged conduct. The OCC recommends that DAPO review any current policies and procedures that address what information must be included on the CDCR 1502-B and make revisions to ensure the due process requirement regarding provision of a short summary of the charged conduct is met, if necessary. It is also recommended that DAPO disseminate a policy and procedure requiring that an adequate short statement of fact for each alleged violation of parole be included on the CDCR 1502-B, and include specific guidance on minimum standards regarding the adequacy of the factual summary.
- DAPO should develop and disseminate policy directing agents to include all known charges on the CDCR 1502-B at the time it is written. This requirement was covered during the 2008 block training for parole agents,

but a policy that requires all known charges be included on the 1502-B would be beneficial from a compliance standpoint.

- The OCC will continue to monitor the issue of missing source documents and conduct investigations to determine the causes and report to the appropriate division the findings and recommended corrective action. DAI and DAPO should also review pre-release packet procedures regarding the inclusion of source documents to determine why source documents are not consistently included in parole packets or forwarded to the parole units for inclusion in the field file.

IV. Unit Supervisor Review of Violation Report

- **99% compliant with requirement that the Unit Supervisor review the Violation Report no later than seven business days after the parole hold is placed.**

The Valdivia Remedial Plan requires the Unit Supervisor review the Violation Report and: (1) determine if there is sufficient basis for the revocation to go forward; (2) determine if the report is accurate, complete, and contains the correct title 15 violation section(s); and (3) review the report and consider whether or not remedial sanctions/community based treatment is appropriate in lieu of proceedings with referral to the BPH with a recommendation that the parolee be returned to prison. This review must occur no later than seven business days following placement of the parole hold.

A timely Unit Supervisor review of the violation report was conducted in 146/148 of the revocation packets reviewed (99 %). (**Exhibit 1-A**). The late cases averaged one day late. *Id.*

The US indicated he has not had any issues meeting the *Valdivia* timeframes, as confirmed by the RSTS “Closed Case Summary by Unit – Valdivia Timeliness Rules, which reflects an outstanding 100% timeliness rating for the Bakersfield 7 parole unit. (**Exhibit # 2**)

Charges Added after Notice

The timely completion of Violation Reports and unit supervisor reviews are to be commended. However, the pre-tour review identified 27 case in which charge(s) known or knowable to the agent were added to the Violation Report but were not included on the CDCR 1502-B when the parolee was served notice. (**See Section III for further discussion on this issue**). All charges known or knowable to DAPO at the time the report is authored must be included on the 1502-B. DAPO is currently conducting statewide training for DAPO’s field staff, which directs agents to conduct a thorough file review and include all known charges when the 1502-B is written. The OCC will continue to monitor this issue but expects that the training will lead to improved compliance in this area.

Arrests and convictions noted together on the CDCR 1521-B

29/148 (20%) CDCR 1521-Bs included prior arrest and convictions together in a way that made it impossible to differentiate the two. Although parole agents have not been expressly directed that arrests and convictions should not be included together on the 1521-B, the practice makes it difficult for deputy commissioners and parole administrators to accurately establish “Priority”

status, and consider whether a parolee is appropriate for a remedial sanction or determine mitigation/aggravation for purposes of case disposition. For the past several months DAPO has been conducting statewide training for field staff. This subject is included in the training and agents have been directed to differentiate arrest from convictions on the 1521-B. OCC monitors attended the training and the direction is clearly articulated and staff seemed receptive to the information provided. The OCC expect to see statewide improvements on this issue during the next round of monitoring.

Revocation packets reviewed prior to the tour revealed the following pertinent compliance deficiencies:

- There were 70/150 cases reviewed prior to the tour in which the CDCR 1654 was not included in the attorney's copy of the revocation packet. However, the pre-tour revocation packets were reviewed over the course several months leading up to the tour. Since the time the packets were reviewed, corrective action was taken to remedy the issue of missing 1654s. Specifically, DAPO sent a Valdivia Alert to staff directing that complete, legible 1654s must be included in all revocation packets and BPH directed DRU staff to ensure the 1654 is included in the attorney's copy before making the packets available to CalPAP. Additionally, the ACDC and CalPAP staff attorney verified that this issue has been solved for some time and that virtually all revocation packets now include the CDCR 1654. The OCC deems this issue resolved and no corrective action will be recommended at this time; however, the OCC will continue to monitor this in the future to ensure continued compliance.
- There were 65 cases in which the parolee was charged with a violation of a special condition of parole and in 11 of them (17%) the CDC 1515 was not included. The CDC 1515 must be included as supporting evidence when the parolee faces an allegation that a special condition of parole has been violated.
- In 39/82 priority cases (48%) the parole agent did not designate "Priority" on the CDC 1676, as required by DAPO policy. (**Exhibit #9**)
- In three cases the Unit Supervisor failed to sign and/or date the CDC 1521-D. (**Exhibit 10**).

❖ **CORRECTIVE ACTION REQUIRED:**

- Unit Supervisor should remind parole agents the CDC 1515 is a supporting/evidentiary document that must be included if the parolee is charged with violating a special condition of parole. The DC must be able to ascertain whether the parole condition actually exists, is valid, and was effectively communicated to the parolee.
- Unit Supervisors and parole agents must familiarize themselves with DAPO/BPH memorandum "Processing of Revocation Cases Related to the Penal Code (PC) Section 1192.7 (c), and 290" dated May 17, 2005, which outlines the procedures for identifying "Priority" cases on the Violation Report.

V. Parole Administrator Review

- **98% compliant with requirement that a Parole Administrator review the revocation packet no later than nine business days after the parole hold is placed.**

Out of the 150 revocation packets reviewed prior to the tour, a Par Ad review was documented in every case. 147/150 (98%) cases were in compliance with the requirement that the Parole Administrator review the case no later than nine business days after placement of the parole hold. (Exhibit #) The late cases averaged 1.7 days. *Id.*

Parole Administrator Interview

The monitors interviewed two Parole Administrators. They provide training and instruction to area parole units in order to familiarize agents with the requirements of a complete revocation packet and improve the quality and content of the revocation packets forwarded to WSP. The Par Ads report they have seen a marked improvement in the quality of reports and revocation packets. They also reported having a good working relationship with the Deputy Commissioners and serve as a liaison between parole units and the BPH.

The Par Ads receives regular emails from DARS regarding ICDTP bed availability and also received daily updates on RCMSC and PSC bed availability from the Parole Agent II. They both reported they are very supportive of remedial sanction programming and consider a parolee's eligibility and appropriateness for placement in every case they review.

The monitors identified eight cases during the pre-tour document review in which the Par Ad did not create a "Priority" designation in RSTS per DAPO policy. (Exhibits 1-B and #11). The OCC monitoring team discussed this issue with the Par Ads and both indicated they are diligent when reviewing the cases for priority designation but that on occasion the revocation packet does not contain adequate information to accurately determine priority status.

VI. Return to Custody Assessment

- **96% compliant with RTCA timeliness requirement.**

The *Valdivia* Remedial Plan requires that a Return to Custody Assessment (RTCA) be conducted no later than 10 business days after the parole hold is placed. A timely RTCA was completed in 144/150 cases reviewed prior to the tour (96 %). (Exhibit 1-A). The six late cases averaged 1.2 days late. *Id.*

Only one issue was reported regarding the RTCAs. According to CalPAP, approximately one-half of cases assigned to the Wasco office are missing the BPT 1103-RTCA at the time of appointment. Often times the RTCA is not available until the PCH occurs. The monitors observed several hearings in which the attorney had to discuss the RTCA offer with the parolee right before the PCH began. The Associate Chief Deputy Commissioner (ACDC) echoed this sentiment, reporting that the current lack of DCs creates circumstances in which RTCAs are not always completed in a timely manner because current deputy commissioner staffing levels require that most time be dedicated to conducting probable cause and revocation hearings. The

ACDC reported that he only has one full-time DC; all others are retired annuitants. According to RSTS, 91% of RTCAs were completed timely at WSP in July 2008. The percentage of timely RTCAs then slipped to 85% in August, 82% in September and 84% in October. **(Exhibit #12)**. This decrease in timely completion of the RTCA is most likely attributable to the shortage of DCs.

Review of the revocation documents

A review of the revocation packets revealed the following compliance deficiency:

- In 11/150 (7%) cases the Deputy Commissioner did not document the consideration of remedial sanctions on the BPH 1104-RTCA. **(Exhibits 1-B and #13)**. However, all but one of these deficient RTCAs were completed prior to implementation of the new version of RSTS on May 5, 2008. The new version of RSTS includes a dedicated drop-down box to document remedial sanctions. All but one of the RTCAs dated after the May rollout were in compliance, which evidences that the RSTS change requiring the Deputy Commissioners to complete the remedial sanctions drop-down box was an adequate and successful corrective action.

❖ CORRECTIVE ACTION REQUIRED:

- **BPH Headquarters should conduct investigation to determine deputy commissioner staffing needs at NKSP and the Wasco State Prison to ensure that both institutions are properly staffed to complete the workload associated with parole revocation and meet the mandates of the Permanent Injunction and Remedial Plan.**

VII. Appointment of Counsel

Defendants shall appoint counsel for all parolees beginning at the RTCA stage of the revocation proceeding. Defendants shall provide an expedited probable cause hearing upon a sufficient offer of proof by appointed counsel that there is a complete defense to all parole violation charges that are the basis of the parole hold. (Paragraph 11(b)(i)) Valdivia Permanent Injunction.

- **99% compliant with the timely appointment of counsel requirement.**

Timely Appointment of Counsel

BPH staff entered information into RSTS regarding the timely appointment of counsel in 136/150 cases reviewed prior to the tour (via the RSTS packet tracking feature). Counsel was appointed timely in 135/136 reviewable cases (99%). **(Exhibit 1-A)**. According to CapPAP's September 2008 "Date Case Assigned Compliance Report," approximately 93% of cases were assigned to the Wasco CalPAP office in a timely manner for the month. **(Exhibit 3)**.

CalPAP Interviews

The monitors met with the staff attorneys at the Wasco CalPAP office, who reported a few issues related to the revocation process at WSP and nearby North Kern State Prison. The issues identified by CalPAP are discussed under the appropriate headings throughout this report in order to maintain continuity and separate issues according to topic.

Review of the BPT 1104-B

- In 108/136 (79%), CalPAP did not complete the “Notice Acknowledgement” segment of the BPT 1104-B. The line requiring verification of forms received during the notice was not completed. The purpose of this line is to act as a check and balance on the CDCR’s provision of documents to the parolee during parole revocation proceedings. If the parolee received all documents during the notice, the attorney should have written “N/A” on the corresponding line. If any document was not provided during the notice, the attorney should indicate such. **(Exhibit 14)**

VIII. Effective Communication and Effective Communication with Appointed Counsel

At the time of appointment, counsel appointed to represent parolees who have difficulty in communicating or participating in revocation proceedings, shall be informed of the nature of the difficulty, including but not limited to: mental illness, other cognitive or communication impairments, illiteracy, limited English-language proficiency, and the need for a foreign language interpreter. The appointment shall allow counsel adequate time to represent the parolee properly at each stage of the proceeding. (Paragraph 13) Valdivia Permanent Injunction.

Defendants will ensure that parolees receive effective communication throughout the entire revocation process. (Paragraph 18) Valdivia Permanent Injunction.

Minimum due process of law, as outlined in *Morrissey v. Brewer*, does not contemplate effective communication during parole revocation proceedings. However, CDCR must provide effective communication and accommodations to parolees with disabilities at all parole proceedings, pursuant to litigation in *Armstrong v. Schwarzenegger*. The Valdivia Permanent Injunction requires effective communication and provision of reasonable accommodation(s) throughout the revocation process.

Missing BPT 1073s and/or Source Documents

Thirty BPT 1073’s reviewed prior to the tour identified a disability and referenced a verifying source document in Section I but 16 (53%) did not have the source documents attached to the revocation packet. **(Exhibit 1-B)**. The source documents are necessary to adequately prepare for and provided accommodations at the notice, attorney/client interview, PCH and revocation hearing. Source documents must be included to facilitate compliance in both the *Valdivia* and *Armstrong* litigation.

According to CalPAP’s September 2008 “Cases Missing 1073 & Source Documents Monthly Report,” 99% of cases processed for the month contained the BPT 1073. **(Exhibit 3)**. Of those cases that required a source document, 78% had the source document attached. *Id.*

Disabilities and Effective Communication System (DEC)

The DRUNA is fully trained and uses DEC as required by current policy and procedures. She did not report any issues or concerns.

The DCs observed during the tour reviewed DEC prior to the ADA review in every case and were observed updating DEC at the conclusion of the hearings.

The DC did not complete Section V of the BPT 1073 in DEC in 11/148 (7%) cases reviewed prior to the tour where the case had proceeded to the PCH level. **(Exhibit 6).**

Sign Language Interpreters

DAPO – A sign language interpreter was not required during the monitoring tour. The notice agent reported there is a sign language interpreter available on-site at Wasco State Prison who is available should the need arise.

Foreign Language/CyraCom

DAPO – A foreign language interpreter or the CyraCom system was not requested or required during the monitoring tour. The notice agent continue to use the CyraCom system when needed and reported no issues with using the system at Wasco State Prison.

BPH- Language People phones were available for use in the BPH hearing rooms.

ADA Accommodations Available

DAPO- The notice agent carries the required ADA equipment, which includes the CyraCom telephone, hearing amplifier and magnifying sheet.

BPH- The DCs had accommodations available at the hearings rooms, including a magnifying sheet, hearing amplifier, wheelchair, and Language People phone. The DC provided a magnifier during several observed hearings.

Section IV of BPT 1073

In 61/150 (41%) cases, Section IV of the BPT 1073 in DEC was not completed by DRU staff. Additionally, in seven cases, Section IV of the BPT 1073 in DEC was completed by the DC rather than DRU staff. **(Exhibits 1-B and 6).** Section IV is designed to indicate what accommodation(s) the parolee needs during the revocation process, so staff reviewing the form can ensure that it is available.

❖ CORRECTIVE ACTION REQUIRED:

- **The OCC will continue to monitor the issue of missing source documents and conduct an investigation to determine the causes and report to the appropriate divisions the findings and recommended corrective action. DAI and DAPO should also review pre-release packet procedures regarding the inclusion of source documents to determine why source documents are not consistently included in parole revocation packets.**
- **BPH must ensure that DRU staff complete Section IV of the BPT 1073 in DEC in every case.**

IX. Confidential Information and Access to Parolee Field File

Non-confidential portions of parolees' field files shall be available to parolees' counsel unless good cause exists for failure to provide access to such files. Field file information shall be withheld from counsel as confidential only in accordance with the Policies and Procedures referenced in Paragraph 15. (Paragraph 16) Valdivia Permanent Injunction.

Parole Unit staff are aware defense attorneys can request to review the parolee field file. Such requests do not happen often but staff is aware of the department's current policy and procedures and will follow protocol as directed.

X. Probable Cause Hearing

Defendants shall provide a hearing to determine probable cause no later than 10 business days after the parolee has been served with notice of the charges and rights (at the 3rd business day after placement of the hold). (Paragraph 11(d)) Valdivia Permanent Injunction.

At probable cause hearings, parolees shall be allowed to present evidence to defend or mitigate against the charges and proposed disposition. Such evidence shall be presented through documentary evidence or the charged parolee's testimony, either or both of which may include hearsay testimony. (Paragraph 22) Valdivia Permanent Injunction.

- **98% compliant with PCH timeliness requirement**
- **100% compliant with requirement that parolee be allowed to present evidence in defense and/or mitigation to the charge(s)**

Minimum due process, as described in *Morrissey v. Brewer*, requires that a parolee be given a preliminary hearing, near the time and place of arrest, to determine whether there is probable cause to believe the parolee has committed a violation of parole. The *Valdivia* Permanent Injunction and Remedial Plan require that a parolee receive a hearing to determine probable cause no later than 13 business days after the parole hold is placed.

The monitoring group reviewed 148 cases prior to the tour that had progressed to the PCH, 145 of which were timely (98%). **(Exhibit 1-A)**. The late cases averaged 1.3 days late. *Id.* The monitors also observed 11 PCHs during the tour, all of which were timely. Therefore, 156/159 total cases reviewed were timely (98%).

According to CalPAP's September 2008 "Probable Cause Hearing Compliance Report," 91.80% of PCHs processed out of the Wasco CalPAP office were timely. **(Exhibit 3)**.

Quality of Hearings

The monitors observed the Acting Associate Chief Deputy Commissioner and two Deputy Commissioners conduct the hearings. For the most part, all three conducted the hearings in a manner consistent with the *Valdivia* Permanent Injunction and departmental policies and procedures. All three conducted thorough and complete ADA reviews and were observed reviewing and updating DEC. Several parolees required or requested accommodation and the Deputy Commissioners provided the necessary accommodation before proceeding with the hearing. For example, parolees Sears (T21403) and Dermer (F72801) required glasses. The

Deputy Commissioners made a magnifier available to the parolee throughout the hearing. All three reviewed the charges, ensured the parolee's revocation rights had been met, allowed defense counsel and the parolee to speak openly, and vocalized their probable cause findings. All three Deputy Commissioners allowed the parolee and defense counsel to speak freely and present mitigating evidence during the hearings. In several cases the Deputy Commissioners used the mitigation to offer a reduced return to custody or a remedial sanction. The ICDTP was offered to two parolees and one accepted placement.

Below is a summary of the compliance deficiencies observed during the hearings:

- One Deputy Commissioner, after reading the evidence presented to support probable cause, announced his probable cause finding before defense counsel was given the opportunity to challenge probable cause.
- The jail-based ICDTP was closed to intake on the second day of observations. Although the Deputy Commissioner discussed ICDTP in cases where the parolee was eligible, he did not discuss any other remedial sanction options or the possibility of a county-to-county transfer to allow parolees to participate in the ICDTP in another county. In the case of parolee Austin (F63574), the Deputy Commissioner discussed ICDTP with the parolee but explained that it was currently full. The parolee accepted an 8E return-to-custody with the direction to complete a drug treatment program at the direction of DAPO upon release. After the hearing the Deputy Commissioner reported he had considered sending the parolee to a Residential Multi-Service Center, but deemed it inappropriate given the nature of the charges (which included battery and resisting arrest) and his prior conviction for robbery.

Evidentiary Basis for Probable Cause Finding Documented by Deputy Commissioner

Minimum due process, as described in *Morrissey v. Brewer*, requires that the hearing officer shall have the duty of making a summary, or digest, of what occurs at the hearing in terms of the responses of the parolee and the substance of the documents or evidence given in support of parole revocation and of the parolee's position. *Morrissey v. Brewer*, 408 U.S. 471 at 487 (1972). Furthermore, the decision maker should state the reasons for his determination and indicate the evidence he relied on..." *Id.* In order to meet this due process requirement, the DC must document the actual evidence relied on when finding probable cause rather than simply citing the source of the evidence or the ultimate conclusion that probable cause was found. For example, if the parolee is charged with absconding it is insufficient to note "probable cause found based on AOR report." A better statement of the evidence relied on might state, "probable cause because parolee was left instructions to call AOR, but did not follow instructions. The agent attempted to contact the parolee but he could not be located from 03/15/08 until the date of arrest." The DCs did not adequately document the evidentiary basis for their probable cause finding in 86/148(58%) of the BPH 1103-PCHs reviewed prior to the tour. **(Exhibits 1-B and 15).**

The Acting ACDC and one Deputy Commissioner adequately documented the evidentiary basis for their probable cause findings on the BPH 1103-PCH in every case, while the other Deputy Commissioner did not provide adequate documentation in any but one of his cases. **(Exhibit 16).** For example, parolee Austin (F63574) was charged with failure to complete a drug treatment program, absconding, battery and resisting arrest. The Deputy Commissioner wrote, as the

evidentiary basis for his finding, “Parolee arrested by the Fresno Police Department as a wanted person (PAL since 7/25/08), failure to complete drug treatment, battery and resisting arrest.” *Id.* However, the Deputy Commissioner did not indicate any evidence that was presented to support the conclusion that these alleged violations occurred and instead merely recited the charges themselves. There is no evidence referenced in the basis for his conclusion. Who did the parolee allegedly batter? How? What evidence was presented to support a conclusion that the parolee resisted arrest? It is critical that the Deputy Commissioner create a summary of the **actual** evidence that supported their conclusion, rather than simply stating the source of the evidence, restating the charges, or simply documenting their ultimate conclusion that probable cause was found.

❖ **CORRECTIVE ACTION REQUIRED:**

- Associate Chief Deputy Commissioners must ensure the DCs are documenting the actual evidence relied upon in making a finding of probable cause. Merely citing the source of the evidence alone does not comply with the requirements of minimum due process. BPH would also benefit from including this subject in the next training for deputy commissioners.
- Deputy Commissioners must be instructed that they should not make a probable cause finding without allowing defense counsel the opportunity to present evidence to dispute the existence of probable cause.

XI. Revocation Hearing

For all parolees who do not waive or seek a continuance of a final revocation hearing, Defendants shall provide a final revocation hearing on or before the 35th calendar day after the placement of the parole hold. (Paragraphs 11(b)(iv) and 23) Valdivia Permanent Injunction.

- **83% compliant with requirement that the parolee have a final revocation hearing no later than 35-calendar days from the parole hold.**

Timeliness

Minimum due process requires that a parolee be given an opportunity for a hearing, if it is desired, prior to the final decision on revocation by the parole. The *Valdivia* Permanent Injunction and *Valdivia* Remedial Plan require that a parolee be given a final revocation hearing no later than 35 calendar days after placement of the parole hold.

Twenty-one cases reviewed prior to the tour had proceeded to a revocation hearing and 17 were timely. (**Exhibit 1-A**). The four late cases averaged 6.5 days late. *Id.* A summary of the late cases can be found in the table below, including analysis to determine whether there was good cause for the late hearing.

Name	CDC #	REV NLT	Date REV Occurred	Reason for Late Revocation Hearing
Banks	V71535	07/09/08	07/14/08	The RSTS Case Status Report indicates that the revocation hearing was initially scheduled for 07/02/08. A RSTS entry on 07/08/08 states the hearing was rescheduled for 07/14/08 and all parties were notified of the change. RSTS does not indicate why the hearing was rescheduled. The BPH 1103 notes that defense counsel objected to the late hearing and that the objection "has merit and is granted" but then the DC also noted that the hearing was nonetheless held on public safety grounds. No good cause for delay.
Curry	F09907	04/13/08	04/14/08	The revocation hearing was one calendar late and the RSTS documents do not indicate the reason the hearing was late. No good cause for delay.
Gipson	F05007	07/28/08	08/13/08	The parolee had a timely PCH scheduled for 07/08/08 but the PCH was postponed because the parolee was out to medical. The parolee was then scheduled for a PCH at Kern Valley on 07/24/08 but was transferred back to WSP on 07/22/08. The PCH was held at WSP on 07/31/08. The parolee rejected the PCH offer and the revocation hearing occurred on 08/13/08, 13 calendar days after the PCH occurred. With the information available in RSTS it is impossible to determine whether there was good cause for the delay because it is unclear how long the parolee was medically unavailable for the PCH.
Richardson	V32615	04/28/08	05/06/08	The revocation hearing was scheduled for 04/29/08, one day late. The revocation hearing was postponed because of TB testing occurring at WSP (no inmate movement). The hearing was rescheduled and occurred on 05/05/08. However, there is no good cause for delay because the initial hearing was scheduled late, on the 36 th calendar day following the parole hold. No good cause for delay.

The monitors also observed two revocation hearings, both of which were timely. **Therefore, out of 23 total cases reviewed for timeliness, 19 revocation hearings were timely or there was good cause for delay (83%).**

According to CalPAP's September 2008 "Revocation Hearing Cases- Over 35 Days" report, 98.02% of revocation hearings for cases originating out of the Wasco CalPAP office were timely. **(Exhibit 3).**

Quality of Hearings

One deputy commissioner conducted the revocation hearings. Parolee Thomas (V98137) was charged with first degree burglary, conspiracy to commit a property offense and association with prohibited persons. His hold date was 07/30/08. His PCH was scheduled timely for 08/14/08 but the parolee was out to court. Defense counsel requested that the PCH be rescheduled for 08/19/08. On 08/18/08, before the rescheduled PCH, defense counsel requested a 30-day timeliness waiver in order to obtain the preliminary hearing transcript from the criminal court. The time waiver was activated on 10/20/08 and the parolee was placed on the PCH calendar, where he rejected the return-to-custody offer on 10/24/08. The case was scheduled for a

revocation hearing on 11/05/08. The parolee's AOR was apparently on vacation at the time the alleged violation occurred. Another parole agent completed the complete Violation Report and was subpoenaed as DAPO's representative for the revocation hearing. The parole agent was not present at the time the hearing was set to commence. The subpoenaed witnesses were present. The parties waited for approximately one hour but the agent did not appear. As a result, the deputy commissioner ordered the parole hold removed and the hearing would be rescheduled as a not-in-custody hearing. (**Exhibit 17**). In addition, the deputy commissioner hand-carried the file to ensure that the parole hold was removed.

The revocation hearing for parolee Villareal (V28275) occurred as scheduled. The parolee was charged with possession of a firearm. The deputy commissioner commenced the hearing by reviewing DEC and conducting a thorough ADA review. The parolee is classified CCCMS and reported he needs reading glasses. The deputy commissioner appointed counsel and provided a magnifier as accommodations. The deputy commissioner also reviewed the BPH 1100 revocation rights, focusing on the right to a copy of the hearing tape, the appeal process, and the right to an impartial hearing officer.

Before witness testimony began, defense counsel inquired why the alleged victim to whom the firearm was brandished was not subpoenaed. The parole agent indicated he was unable to obtain a phone number or address for the victim. The first witness who testified was the responding officer from the Bakersfield Police Department. The officer testified that he was informed by the alleged victims that someone had ridden up on a bike and brandished a shotgun. One of the victims identified the parolee as the suspect. The officer then testified that he arrived at the parolee's residence, which is shared with a roommate. The officer located a shotgun in the roommate's unlocked bedroom and a bike matching the description given by the victims in the hallway during a search of the house. At the conclusion of the officer's testimony, defense counsel made a *Comito* objection to any statements made to the officer by the alleged victim, who was not subpoenaed and was not present for cross examination. The objection was granted and any evidence concerning the victim's statements was excluded.

The parolee's roommate then testified that the gun was his, that it is kept hidden under his bed, that the parolee did not know he owned the gun and that his bedroom door is almost always locked. Based on the fact that there was no eye-witness placing the firearm in the possession of the parolee, coupled with the roommate's admission that there was a gun in the house to which the parolee could gain access to, the deputy commissioner amended the charge to access to a firearm. After the dispositional portion of the hearing, during which the parolee was allowed to present mitigating evidence and positive aspects of his parole performance, the parolee was assessed a 9E return to custody.

The deputy commissioner verbally explained the evidentiary basis for his good cause finding and documented the basis for that finding on the BPH 1103.

XII. Remedial Sanctions

According to RSTS, in the month of October 2008 DAPO gave parolees a remedial sanction (for non-mandatory referrals) or recommended that the parolee be given a remedial sanction by the BPH in 37% of cases at the PCD step, 40% at the Refer step and 9% at the Par Ad step. (**Exhibit**

18). In addition, the BPH recommended or gave a remedial sanction in 11% of cases at the RTCA step, and actually ordered a remedial sanction in 9% of PCHs and 5% of revocation hearings. *Id.*

During the observed proceedings, Deputy Commissioners discussed ICDTP where the parolee was eligible. Two parolees were offered ICDTP and one accepted placement. However, the Deputy Commissioners did not discuss any remedial sanction options other than ICDTP. In addition, on the second day of observations the local jail-based ICDTP became closed to intake. Several parolees were eligible for ICDTP but were denied placement because there was no bed space. The Deputy Commissioner did not consider a county-to-county transfer or utilize any other remedial sanction options. CalPAP reported that not many Deputy Commissioners consider or offer any other remedial sanctions. It appears that Deputy Commissioners would benefit from training that addresses all available remedial sanction options and direction requiring that they consider all of the available remedial sanctions during their review. ICDTP is not the only remedial sanction available in the area.

CalPAP also reported a few instances where a parolee accepts ICDTP and is then rejected from the program due to exclusionary criteria, most commonly due to the parolee's previously unreported gang affiliation. In those cases the parolee must return to the BPH for a new PCH. In addition, CalPAP reported a few cases in which the parolee completes the in-custody portion of the ICDTP and then a warrant from another county is discovered. In such instances the parolee cannot be released from custody to complete the remaining portion of the program.

XIII. Mentally Ill Parolees

According to CalPAP's 10/31/08 GAP parolee log, there are currently seven parolees out of the Wasco CalPAP office whose revocation proceedings have been suspended because they are unable to meaningfully participate in the process due to mental illness. (**Exhibit 19**). Three of those parolees have been transferred to Patton State Hospital, two are currently unable to participate per clinical staff, one is unable to participate per defense counsel's observations and meetings with the parolee, and one was deemed able to participate and had her hearing on 09/30/08 where she was assessed 7E.

The BPH staff did not report any issues associated with the current GAP process.

CalPAP reported a few issues regarding the current process:

1. Credit for time served applied to GAP parolees without a hearing- According to CalPAP, some parolees whose revocation proceedings are suspended due to mental illness are given credit for time served by the BPH without a hearing in order to close the case. This causes CalPAP concern because assessing credit for time served is an adverse action against the parolee, which can negatively impact discharge review and parole. For example, parolee Peterson (F78803) was arrested on 10/24/07 and charged with absconding and trespassing. The proceedings were suspended due to the parolee's mental health issues. A supplemental charge for battery was filed in April 2008, while the parolee was still in suspended status. On 4/14/08 the BPH informed CalPAP that the parolee would be given credit for time served effective 4/17/08, although he had not had a hearing and was still too mentally ill to participate in the proceedings. CalPAP objects

to this practice, arguing that such disposition should not be imposed without a hearing. In the case of Mr. Peterson, the BPH ultimately agreed to give the parolee a hearing on the charges. The parolee accepted credit for time served at the hearing after her was deemed able to participate.

2. Visiting GAP parolees every two weeks: According to CalPAP, the requirement that defense counsel visit their clients every week causes some concern. In their experience, there are some parolees whose mental illness causes them to become paranoid and/or extremely suspicious when they are seen with such frequency. As a result, some clients become distrustful of their attorney, which can negatively impact the attorney/client relationship. For example, CalPAP's 10/31/08 GAP log includes a notation regarding parolee Smith (F93164), indicating that the attorney opted not to visit him because he was becoming increasingly wary of counsel. This is not the case with every parolee but in some cases CalPAP believes it would be best to gain mental health status information from the clinicians when regular attorney visits negatively affect the parolee's mental status.

XIV. Ability to Subpoena Witnesses

Parolees' counsel shall have the ability to subpoena and present witnesses and evidence to the same extent and under the same terms as the state. (Paragraph 21) Valdivia Permanent Injunction.

Two parolees rejected the return-to-custody offer at the PCH and opted to proceed to a full revocation hearing. In both instances the Deputy Commissioner allowed the parolee and defense counsel to confer and select witnesses. The Deputy Commissioner approved selected witnesses.

During the two revocation hearings the parolees were able to present evidence in defense and mitigation to the charges.

XV. Presentation of Evidence at Revocation Hearings

The use of hearsay evidence shall be limited by the parolees' confrontation rights in the manner set forth under controlling case as currently stated in *United States v. Comito*, 177 F.3d 1166 (9th Cir. 1999). The Policies and Procedures shall include guidelines and standard derived from such law. (Paragraph 24) Valdivia Permanent Injunction.

Due process requires that a parolee be allowed to confront and cross-examine adverse testimonial witnesses, unless the hearing officer specifically finds good cause for not allowing confrontation. The *Valdivia* Permanent Injunction further requires that the use of hearsay evidence shall be limited as set forth the U.S. Supreme Court case *United States v. Comito*.

One *Comito* objection was made during the observed revocation hearings. Parolee Villareal (V28275) was charged with possession of a firearm after the alleged victim reported to police that the parolee had ridden up on a bike and brandished a shotgun. However, the alleged victim who identified the parolee was not subpoenaed for the revocation hearing. The police officer testified regarding the victim's statements and defense counsel made a *Comito* objection, which the deputy commissioner took under submission. Once all evidence was heard it was clear that

the only evidence linking the parolee to possessing a firearm were the victim's hearsay statements to police. Based on the parolee's right to confront and cross examine the witness, coupled with the fact that the victim had not been subpoenaed, the deputy commissioner granted the objection and the victim's statements were excluded. The objection and ruling were documented on the BPH 1103. Based on other evidence provided by another witness, the charge was amended to access to a firearm because a shotgun was located in the parolee's residence when it was searched.

XVI. Staffing Levels

Defendants shall maintain sufficient staffing levels in the CDC and BPT to meet all of the obligations of this Order. (Page 6, lines 15-17) Valdivia Permanent Injunction.

BPH:

The ACDC reported a shortage of deputy commissioners at WSP and the surrounding areas. There is only one full-time deputy commissioner assigned to the area and all others are retired annuitants. The ACDC stated that the revocation workload has increased over time and that more deputy commissioners are needed to complete all necessary work in a timely manner. This is evidenced by the fact that the timely completion of RTCAs has declined in the recent months at WSP, reportedly due to the lack of deputy commissioners available to complete that work in addition to presiding over probable cause and revocation hearings.

The ACDC reported that the WSP DRU is currently fully staffed.

DAPO:

The Supervising Notice Agent reported he is down 3 notice agent positions. He does hopes to have these positions filled once CDCR headquarters given him the go ahead. Valdivia timeframes have not been impacted due to the shortage.

The Bakersfield Parole Unit Supervisor report he has a full compliment of 8 parole agents but he has one Parole Agent II vacancy. Per the District Administrator, there are no staffing issues that impact the workload effecting Valdivia time frames. There were no reported problems with Clerical staff processing revocation packets or meeting Valdivia time frames.

XVI. Revocation Extension

The OCC interviewed the Classification and Parole Representative (C&PR), Assistant C&PR and one Office Technician at WSP regarding the revocation extension process. The Monitors also interviewed CalPAP's staff attorneys, who reported some issues associated with the revocation extension process, discussed below.

The ability to track the revocation extension process has improved with the implementation of the new policy and procedures and the use of the RSTS. These policies and procedures were implemented on May 8, 2008 by memorandum, titled, "Instructions Regarding the Implementation of the Revised Parole Revocation Extension Procedures and Revocation Scheduling and Tracking System," However, despite the improvements in tracking revocation extensions, timeliness is not in compliance with the mandates of the Permanent Injunction or the new policy and procedure. Initial analysis indicates that most delays are attributed to late

submission of the CDC115 and CDC804 to Case Records. These delays cause the remaining steps in the process to be late as well.

Timeliness of receipt of CDC 804 and CDC 115

The OCC reviewed revocation extension cases at WSP between October 1, 2008 and October 31, 2008. There were 13 cases processed, five of which were processed timely at this step (38%). **(Exhibit 20)**

In discussing timeliness at this step, Staff attributed delays to a number of factors. The Case Records Supervisor cannot require staff to stay past their assigned shift to complete reports; therefore, the CDC 115, Rule Violation Report is rarely completed within 24 hours of the incident or discovery of the parolee's violation. Also, staff cannot prioritize cases until they are able ascertain which inmates are parole violators which can create a delay in starting the revocation process.

Timeliness of Notice of Rights

At WSP, the C&PR receives the CDC 804 and a copy of the CDC 115 from the case records staff, initiates the case in RSTS, checks DEC, enters ADA/disability information in Section I of the BPH 1073 then forwards the packet to the assigned Correctional Counselor I (CCI) to complete the notice. Although the 804s and the 115s are consistently submitted late to Case Records, the CCI's and CCII Supervisors should make every effort to meet the timeliness associated with their involvement in the revocation extension process and try to complete and return the notice packet to records within one business day of receipt. However, according to the RSTS Case Status Reports, only 3/13 (23%) packets were returned within one business day after being provided to the CCI to serve the parolee notice. **(Exhibit 21)**. Furthermore, none of the 13 cases were processed timely at the NOR step. **(Exhibit 20)**. The late notices occurred because the 804/115 were submitted late to Case Records or the CCI did not complete the notice within the one business-day timeframe required by the policy and procedures.

Timeliness of Revocation Extension packets referred to the BPH

Four (33%) of the cases were processed timely at the BPH referral step. **(Exhibit 20)**.

Timeliness of the Attorney Appointment

Four (31%) of the cases were assigned to CalPAP in a timely manner. **(Exhibit 20)**. During interviews with CalPAP staff, concern was raised regarding the large number of cases in which counsel is not appointed in a timely manner. In addition, according to CalPAP revocation extension packets are incomplete when provided to the CalPAP office.

Timeliness of Attorney Consultation

Only 2/13 (15%) cases were timely at this step **(Exhibit 20)**.

Timeliness of the Probable Cause Hearing

Only 10 cases proceeded to a PCH. 4/10 cases (40%) had a timely hearing. **(Exhibit 20)**. According to CalPAP, the PCH is often scheduled, and then the charges against the parolee are amended or additional charges added. However, CalPAP is not provided any additional

information or evidence to support the amended or added charges. CalPAP is simply notified of the changes via email from the Revocation Extension Desk.

Timeliness of Revocation Extension Hearing

Only one case went to a Revocation hearing and it was conducted timely. (Exhibit 20).

❖ CORRECTIVE ACTION:

- **DAI must hold staff accountable when Valdivia timeframes are consistently not met. The policies and procedures are in place and have been provided to staff; therefore, staff must be held accountable for following them.**